rights and duties of a school board, negligently failed to keep a school playground in the condition required by statute. As a result, a school boy was injured. *Held*, that the defendants are liable. *Ching* v. *Surrey County Council*, 25 T. L. R. 702 (Eng., K. B. D., July 5, 1909).

At common law, a municipal corporation is not liable for damage caused by its negligence in the exercise of purely governmental functions. See *Folk* v. *City of Milwaukee*, 108 Wis. 359. It is well established that the maintenance of schools by local boards as agents of the state is a governmental function. *Freel* v. *Crawfordsville*, 142 Ind. 27. See *Hill* v. *City of Boston*, 122 Mass. 344. Therefore a municipal corporation has been held not liable at common law for injuries to a pupil caused by the defective condition of the school house and grounds. *Wixon* v. *City of Newport*, 13 R. I. 454; *Finch* v. *Toledo Board of Education*, 30 Ohio St. 37. The reason sometimes given is that the board is not empowered to expend money raised by taxation to meet such claims. *Ernst* v. *West Covington*, 116 Ky. 850. The fact that the corporation is performing a public service from which it receives no corporate benefit, likens the school system to a vast charity, and the public interest would be subverted by the diversion of the public school funds to private claims. See *Ford* v. *School District of Kendall Borough*, 121 Pa. St. 543. Therefore a private action cannot be brought for a breach of a municipal corporation's public duty to maintain a school, unless such action is expressly or impliedly authorized by statute. *Cf. Gibson* v. *Mayor, Aldermen & Burgesses of Preston*, [1870] L. R. 5 Q. B. 218. Such authorization does not appear in the statute in the principal case.

PATENTS — EQUITABLE EXECUTION ON PATENT RIGHTS. — The plaintiff obtained a judgment against the defendant, a non-resident, who held no tangible property within the jurisdiction. Upon failure of legal execution, the plaintiff applied for the appointment of a receiver, by way of equitable execution, to receive the profits of three English patents owned by the defendant and within the jurisdiction. No present income was being derived from the patents. *Held*, that no receiver can be appointed. *Edwards & Co.* v. *Picard*, 25 T. L. R. 815 (Eng., Ct. App., July 30, 1909).

It has been repeatedly held that a patent right is property, though on account of its incorporeal nature, not subject to seizure and sale at common law. *Peterson* v. *Sheriff of San Francisco*, 115 Cal. 211. But equity has power to order its assignment and sale for payment of the patentee's judgment debt. *Gillett* v. *Bate*, 86 N. Y. 87; *Pacific Bank* v. *Robinson*, 57 Cal. 520. And upon the patentee's failure to execute such assignment, it is proper for the court to appoint a suitable person as trustee to execute the same. *Ager* v. *Murray*, 105 U. S. 126. The same result is reached by the appointment of a receiver to dispose of the patent for the creditor's benefit. *Blanchard* v. *Cawthorne*, 4 Sim. 566; *Petition of Keach*, 14 R. I. 571. The principal case limits the subjection of a patent right to equitable execution to those instances where income is being derived therefrom. This seems unsound on principle as well as on authority. For it would allow the debtor, by leaving his patent unworked, to defeat the creditor, when a sale or license of the patent might yield enough to pay the judgment debt.

QUASI-CONTRACTS — RECOVERY FOR BENEFITS CONFERRED WITHOUT CONTRACT — MEASURE OF DAMAGES. — Acting on what both parties erroneously believed to be a contract, the plaintiff made improvements on the defendant's land. Owing to the defendant's lack of business judgment the increased value of the premises was less than the cost of the labor and materials expended. *Held*, that the plaintiff can recover the value of the labor and materials. *Vickery* v. *Ritchie*, 202 Mass. 247.

To prevent unjust enrichment, a plaintiff can recover on a *quantum meruit* what he deserves under all the circumstances of the case. Negligence or want of skill reduces his damages. *Ervin* v. *Epps*, 15 Rich. Law (S. C.) 223, 229. And

they may entirely bar recovery. *Farnsworth* v. *Garrard*, 1 Campb. 38. But lack of benefit to the defendant is not a defense, unless due to fault of the plaintiff. See *Edington* v. *Pickle*, 1 Sneed (Tenn.) 122, 127. Thus it appears that other important considerations would often be omitted, if the amount of the defendant's enrichment were used as the sole measure of damages. But see *Farnsworth* v. *Garrard*, *supra*. Where the plaintiff is not at fault, the great weight of American authority looks rather to the services rendered and the materials furnished, than to the benefit received by the defendant. Such is the rule if the defendant prevents performance of the contract. *Mooney* v. *York Iron Co.*, 82 Mich. 263. The same rule applies if work is done on express request. *Stowe* v. *Buttrick*, 125 Mass. 449. But see *Van Deusen* v. *Blum*, 35 Mass. 229. If the contract fails owing to mutual mistake, or lack of mutual assent, the request is implied. *Buck* v. *Pond*, 126 Wis. 382. In the principal case, the fact that the defendant was enriched less than he might have been was due to his own fault, and should not affect the plaintiff's recovery.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — COVENANTOR'S LIABILITY UPON RE-ENTRY AFTER BREACH OF COVENANT BY LESSEE. — The defendant on buying an estate covenanted with the vendor, for himself and his assigns, to erect no other than private residences. He then granted a lease, taking covenants similar to his own. The lessees erected a building in violation of the covenant. They then became bankrupt, and upon their trustee's disclaimer of the lease the defendant re-entered. The rest of the vendor's estate with the benefit of the covenants was thereafter sold to the plaintiff. *Held*, that the plaintiff is not entitled to a mandatory decree to compel the removal of the building. *Powell* v. *Hemsley*, [1909] 2 Ch. 252.

The principal case seems to misunderstand the true grounds for equitable relief by way of mandatory decree. Such relief is granted on the theory that only by specific reparation can equity be done, when there has been a breach of such a covenant as would ordinarily allow specific performance. *Tucker* v. *Howard*, 128 Mass. 361. Specific reparation seems to connote a wrong already done, and the decree orders that the wrong be undone. *Atty.-General* v. *Algonquin Club*, 153 Mass. 447. And whether the plaintiff has suffered damage is immaterial. *Lord Manners* v. *Johnson*, 1 Ch. D. 673. See *Lloyd* v. *London, etc., Ry. Co.*, 2 DeG., J. & Sm. 568. The relief is granted on the ground that the defendant has broken his covenant, and must not be allowed unjustly to be enriched thereby. In equity the burden of such restrictive covenants binds all purchasers with notice. *Tulk* v. *Moxhay*, 2 Phillips 774. In the principal case, the defendant had notice of the restrictions and of his lessee's breach. Consequently when he acquired the latter's interest, he got no right to retain the benefit of the building wrongly erected. See *Bird* v. *Hall*, 30 Mich. 374; *Gaskin* v. *Balls*, 13 Ch. D. 324. The discussion by the court as to whether or not there was a continuing breach seems irrelevant, and it is submitted that the refusal of relief merely because the breach was completed before the purchase by the defendant was erroneous.

SALES — BREACH OF WARRANTY — BUYER'S REMEDIES MUTUALLY EXCLUSIVE. — The plaintiff sued for the purchase price of a harvesting machine. The defendant filed a counterclaim to recover, as having rescinded the contract, freight charges paid as part of the purchase price, and also consequential damages resulting from breach of warranty. The court instructed that in case of a preponderance of evidence in his favor, the defendant might recover both items so claimed. *Held*, that such an instruction is error. *Houser & Haines Mfg. Co.* v. *McKay*, 101 Pac. 894 (Wash.). See NOTES, p. 141.

SALES — CONDITIONAL SALES — RISK OF LOSS. — The plaintiff sold to the defendant a cash register, retaining title thereto as security for the payment of